



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

ONE SOUTH STATION

BOSTON, MA 02110
(617) 305-3500

JANE SWIFT
GOVERNOR

JENNIFER DAVIS CAREY
DIRECTOR OF CONSUMER
AFFAIRS
AND BUSINESS REGULATION

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JAMES CONNELLY, ESQ.
COMMISSIONER

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VIA EMAIL AND U.S. MAIL

MEMORANDUM

TO: Service List in D.T.E. 97-116 Docket

FROM: Paula Foley, Hearing Officer

RE: GNAPs/WorldCom Joint Motion to Amend the Procedural Schedule and Extend Time for Filing Briefs

DATE: November 7, 2002

CC: Paul G. Afonso, General Counsel

I. INTRODUCTION

On November 5, 2002, Global NAPs, Inc. ("GNAPs") and MCI WorldCom Communications, Inc. ("WorldCom") filed a Joint Motion to Amend the Procedural Schedule and Extend the Time for Filing Briefs ("Motion to Amend"). On November 6, 2002, XO Massachusetts, Inc. ("XO"), RNK, Inc. d/b/a RNK Telecom ("RNK"), RCN-BecoCom, L.L.C. ("RCN"), and Verizon Massachusetts ("Verizon" or "VZ") filed responses to the Motion to Amend.

II. POSITIONS OF THE PARTIES

In the Motion to Amend, GNAPs and WorldCom propose that, because the Department has yet to file a motion for stay of the United States District Court's ("District Court") remand decision, briefs in this proceeding should be due two weeks after disposition of the motion for stay, with reply briefs due one week later (or some other date with a more realistic relationship to the Department's efforts to seek a stay) (Motion to Amend at 1-2). In the alternative, GNAPs and WorldCom request that briefs be due no sooner than December 2, 2002, with replies due one week later (id. at 2). GNAPS and WorldCom argue that without an extension of the time to file briefs, the parties to the remand proceeding would have to complete the significant expense of briefing which would be unnecessary if the Department's motion for stay is granted (id. at 1-2).

XO, RCN, and RNK support GNAPs' and WorldCom's Motion to Amend. XO argues that if the Department's motion for stay is granted, briefing by the parties will be unnecessary and the Department should spare the parties this unnecessary expense (XO Response at 1). XO further argues that briefing the remand at the same time that the Department's appeal is pending would be procedurally confusing (id.). In addition, XO argues that the parties should have the opportunity to review the Department's motion for stay and the Court's ruling on it and address those issues in their briefs (id.). Similarly, RCN argues that the briefing schedule set by the Department should be revised to incorporate the disposition of the Department's motion for stay (RCN Response at 1). RCN further argues that it makes little sense to expend resources of the Department and the parties while a motion for stay is pending (id.).

Verizon argues that GNAPs and WorldCom's Motion to Amend should be denied as it is both procedurally and substantively deficient (VZ Response at 1). Verizon argues that the motion is an untimely appeal of a hearing officer procedural ruling (id. at 2). Verizon further argues that the motion provides no substantive grounds for a delay (id. at 3). Verizon argues that, while the Department's appeal of the District Court's decision has merit, the Department may not disregard its obligations on remand and refuse to move forward (id.). Further, Verizon argues that GNAPs' motion is in stark contrast to the position that GNAPs has taken in civil litigation (id.). Verizon argues that GNAPs has attempted to circumvent the administrative process by filing suit in Massachusetts Superior Court seeking payment of reciprocal compensation (id.). This is an attempt by GNAPs, argues Verizon, to delay the Department's response to the remand, while attempting to be granted a windfall of tens of millions of dollars (id. at 4).

III. ANALYSIS AND FINDINGS

For the following reasons, I deny GNAPs and WorldCom's Motion to Amend. First, according to standard appellate procedure, the Department will file a motion for stay with the District Court at the earliest possible date following docketing of the appeal with the United

States Court of Appeals for the First Circuit ("First Circuit").¹ While the Department believes that our motion for stay should be granted, until it is actually granted, the Department has an ongoing obligation to address the District Court's remand. If the stay is granted, our proceeding will be stayed. If the stay is denied, the Department will continue to proceed pursuant to the District Court's remand instructions to engage in "proceedings or deliberations" that "consider the contract language in the parties' interconnection agreements." Second, GNAPs and WorldCom filed the Motion to Amend only three days before the briefs are due, giving the parties and the Department a very short time in which to respond to the motion. However, in order to provide the parties with some additional time to brief what the Department and the parties all agree is a matter of substantial importance, I will agree to extend the briefing schedule to allow for receipt of initial briefs on **Tuesday, November 12, 2002**, and replies on **Tuesday, November 19, 2002**.

If you have any questions, please contact me at (617) 305-3608.

¹ The Department's appeal was docketed with the First Circuit on November 6, 2002, therefore, the motion for stay of the decision will be filed either today or tomorrow. However, we agree with Verizon that the granting of a stay is neither automatic nor routine, and we cannot presume how quickly the District Court will act on the motion.